

A NARRATIVE

OF THE

PROCEEDINGS of the Court of *King's-
Bench*, in *Ireland*, relating to the TRIAL of

MARY HEATH,

for *PERJURY*:

IN TWO LETTERS.

The FIRST, from a Council learned in the
LAW, who was well acquainted with the
Whole Proceedings.

The SECOND, from a Gentleman who attended
the TRIAL.

*He speaks with others Tongues, and hears Men's Suits
With others Ears; Will seem to sleep o'th' Bench,
Only to entrap Witnesses in their Answers;
Dooms Men to Death by Information;
Rewards by Hearsay. Then the Law to him
Is like a foul black Cobweb to a Spider.*

WEBSTER.

*What can Innocence hope for
When such as sit her Judges are corrupted?*

MESSENGER.

L O N D O N:

Printed for J. KING, in the Strand.

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P R E F A C E.

WHEN the following Letters came my Hand, I thought the Content of too extraordinary a Nature be stifled, or suppressed, from the Knowledge of the World: And though a private Dispute for Title or Property, is not of public Concern; the Execution of public Justice most certainly is; and it is a Duty every honest Man owes his Country, owes the Public, to exhibit Offenders, who either violate or prostitute it to sinister Purposes and cannot be come at otherwise, to View,

The Facts exposed in the two following Letters, are, I believe, the most bare-faced Instances of Iniquity, Partiality, and a shameless Prostitution of public Justice ever known in any Court since the famous Judge Jeffrey's Time: And as they are already known, and have made

The P R E F A C E.

such Noise in a neighbouring Kingdom, I have ventured to publish them here, to shew the World what Arts are made use of to prejudice and oppress an unhappy Gentleman, whose past Misfortunes are but too well known.

Whoever reads the following Sheets, and duly considers the Number, the Power, and the Influence of the Party that supported the Criminal; together with the Behaviour of the B---ch, will no longer wonder that she has been acquitted: But on the contrary, be surprised how this extraordinary Affair, between Mr. Annesley and his Adversaries, could have been carried on with such Spirit, against so powerful and numerous a Faction, and brought to the Crisis it is now at, by the uncommon Ardor, and Resolution of one single Gentleman.



A LETTER, &c.

S I R,

THE late Trial of MARY HEATH, has for some Time engross'd the whole Conversation of this Place; and her unexpected Acquital, hath greatly surprized every Body; for notwithstanding the manifold Disadvantages of being compell'd to go to Trial so prematurely in the Absence of the Gentlemen who carried on the Prosecution, and of their most material Witnesses; as also its being thus hurried on by the Court when they were so little prepared for it; the Evidence for the Crown appear'd so full, conclusive, and clear; that when it was clos'd, twenty Guineas to one were laid in the Coffee-houses she would be convicted.

The Partiality of the Court throughout this whole Affair is but too justly censured, and not only occasion'd a great Clamour, but has given great Occasion of Scandal and Offence to all the unprejudiced People here.

As the Lord Chief Justice M-----y is on his own Part so deeply interested in the Issue of this Cause, and as his singular Attachment to a certain Person whose All depends upon it, is so publicly

licly known ; his very best Friends highly blame his Imprudence in removing this Affair upon so slight Grounds, and in so unprecedented a Manner from a Court where it was cognizable, to a Court where he presides, and which it is well known he directs as he pleases, especially as he could and ought to have avoided it.

Some, and those not a few, don't scruple to say, that his Prepossessions against Mr. *Annesley* and his Cause, discover'd themselves very early, not only in his Conversations, but in other Circumstances which (though of too frivolous and low a Nature to be taken Notice of, yet) could not escape the Observation of the Public. Such were his obliging the Keeper of the Court of *King's-Bench*, after the Judge's Chamber had been engaged for Mr. *Annesley's* Witnesses on the Trial at Bar, to give it up to my Lord *Anglesey*. His not deigning to return Mr. *Annesley's* repeated Civilities at the Castle and other public Places, at a Time when he was the Object of the Attention of every other Person. His too visible Anxiety while the Trial at Bar, betwixt Mr. *Annesley* and Lord *Anglesey*, was proceeded in, concerning the Issue of it, was also taken Notice of.

Others censure the Forwardness shewn in granting a *Certiorari* without any solid, or good Reason being given for so doing, to remove a Cause wherein there was no Manner of Difficulty or Intricacy, from before a Court which must be own'd to be in every Respect, a very competent one, for the Trial of all criminal Offences.

fences : A Court that is composed of all the Judges, and many of the chief Nobility of the Kingdom, and that was instituted for that very Purpose. This is the more remarkable, as it is contrary to the usual Practice, in the like Cases; there being but few, if any Instance to be found in the Kingdom, of a *Certiorari* being granted to remove Indictments for Perjury; and it being laid down as a general Rule that the King has a Prerogative of suing in what Court he pleases; but that the Court will never grant a *Certiorari* to the Defendant for the Removal of an Indictment without some special Cause: As where there is just Reason to apprehend, that the Court below may be unreasonably prejudiced against the Defendant; or where there is so much Difficulty in the Case that the Judge below desires that it may be determined in the *King's-Bench*; or where the King himself gives a special Direction that the Cause shall be removed; none of which could be alledged in the present Case. There was no Intricacy, or Difficulty in it, but a plain Matter of Fact to be proved: No Prepossession apprehended or alledged on the Part of the Court below: Nor any Direction from the King to remove it.

See Hawkins's *Pleas of the Crown*, Chap. 27
 Sect. 27. 1. of Salk. 144. Pl. 2, 1. Kab. 4
 1. Salk. 150. Pl. 18. 1. Salk. 149. Pl. 15
 1. Vent. 63. 1, Mad. 41. See also Hawk
 Chap. 27. Sect. 28. where Perjury is particularly specified, and where it is said, that
 The Court of *King's-Bench* will not ordinari.

at the Prayer of the Defendant, grant a *Certiorari* for the Removal of an Indictment of Perjury or Forgery, or other heinous Misdemeanour; *for such Crimes deserve all possible Discountenance; and the Certiorari might delay, if not wholly discourage their Prosecution.* 1. Sid. 54. Pl. 19. This is home to the Point: The Gentlemen who carried on the Prosecution, it must be confess'd, have had but too just Reason to complain that this last Position, (if ever in any Case) has been verified in the present; for they have manifestly been both delay'd and discouraged in this Prosecution; by which Means the Criminal has escaped the Punishment due to her Crime, as will plainly appear by the following Narrative of the Proceedings.

In the first Place, the *Certiorari* was not brought till the very Day design'd for the Trial, after the *Venire* had been awarded, and the Witnesses brought to Town from *England*, and all the different Quarters of this Kingdom, and all Things prepar'd for the Trial at a great Expence. And it appears from the Year-Book of the 16th of *Edw. IV.*, that a *Venire* awarded for Trial, and Issue join'd in the Court below, is a good Objection, not only against granting a *Certiorari*, but where a *Certiorari* had been granted in such a Case, that the Court being afterwards apprised of the Matter, remanded the Cause. See 5 Pl. 3. Bro. Cro. 162. Here Issue was in a Manner join'd, the Criminal was at the Bar, the Jury in the Box to try her, and the Council prepared with their Briefs in their Hands.

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The Cause being thus removed to the *King's-Bench*, the Parties no sooner appear'd in that Court, than the Partiality and Warmth of the Bench, in Favour of the Defendant, manifested itself in a flat direct Opposition to every Thing how reasonable soever, required on the Part of the Prosecutors; nor were they even treated with common Decency or good Manners: One of the Judges, was so little Master of his Passion on this Occasion, as to get up in great Warmth, and among other Things said, *That those who had committed this Woman ought to be attach'd.* A very remarkable and extraordinary Expression from a Judge in Favour of a Criminal who had been committed by one of the first Peers in the Kingdom; and who at that very time had not only the Weight of a Verdict, but Bills of Indictment found against her, by the Grand Jury of the County of *Dublin*. This Expression from the Bench, together with their extraordinary Behaviour, in other Respects, was an early Prognostic of the Genius and Spirit of that Court, and of the Treatment Mr. *Annesley* and his Friends were to expect from them afterwards.

The 7th Day of *November* last, being the second Day of Term, this Woman, *Mary Heath*, appeared in Court on her Recognisance, and the Prosecutors having again prepared every Thing for Trial, she was ask'd if she was ready for it? to which she answer'd she was not, and begg'd for Time, which was granted her till the 14th, without any Opposition, the Prosecutors keeping
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their Witnesses all that Time in Town at a great Expence.

On the 13th of *November*, the Day immediately preceding that appointed for her Trial, the Traverser moved the Court to put it off till the next Term, which was warmly opposed by the Council in Behalf of the Crown for the following Reasons. 1st. Because it appeared the Criminal had already had three Months to prepare for her Trial; and that even since the finding of the Bills of Indictment against her, she had had sufficient, and more than sufficient Time, to prepare for it; and it did not appear to the Court that she had hitherto taken out one *Subpæna*, or taken any one Step towards it, but that she wholly relied on the Indulgence of the Court.

2d. That the Gentlemen who carried on the Prosecution, tho' Matters of the highest Consequence required their Presence in *England*, had already been long detain'd in this Kingdom, on Account of that Prosecution, and could not possibly return against next Term to prosecute her.

3d. That they had already several Times brought their Witnesses to Town from the several distant Quarters of this Kingdom; that many of them who were infirm and unable to travel, and others who came from *England*, and the most distant Corners of this Kingdom, and who could not attend again next Term, on Account of the Delays already given to this Trial, have been kept in Town several Weeks at a very extraordinary Charge; that several of the most material Witnesses were very old, infirm, and in Danger

Danger of dying ; whereby the Criminal might, for want of due Prosecution, escape the Punishment so black a Crime deserves.

4th. That tho' she had already had sufficient Time to prepare for her Trial, yet the Prosecutors were still willing to allow her all the Time that could be given her in this Term, which is about eleven Days, and to be at the further Expence of keeping their Witnesses during that Time in Town.

These and several other strong Reasons were given for not delaying the Trial to the next Term, but all availed nothing. The Court would have no Regard to their Remonstrances, however reasonable and just ; but treated them with the greatest Contempt ; and contrary to Law, and the common Practice in like Cases, the Trial was for the third Time put off till the fourth of *February* following, on the single Affidavit of *Mary Heath*, wherein she swore that her Daughter, and another Woman called *Judd*, neither of whom were produced on the Trial, or had ever been in *Ireland*, were material Witnesses for her, *to disprove Facts which happened in that Kingdom.*

It was then moved on the Part of the Prosecutors, that Security should be given for the Expence, *occasioned by the affected, ill-grounded, and vexatious Delays on the Part of the Traverser*, in case she was found guilty, which was also rejected by the Court ; and the Traverser in Place of having her Recognisance, enlarged, as is usual on such Occasions, had it

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reduc'd by the special Favour of the Court, to less than one Third of what it was before. What good Reasons they could have for so singular an Indulgence, is easy to guess; it cou'd be no Hardship on her who was supported by so powerful a Combination, to have found Bail in Court for ten Times that Sum.

The Genius of this Bench in Relation to Mr. *Annesley*, will appear in a clearer Light in the two following Instances: First the Denial of an Attachment against Mr. *Blakeney*, on a Motion made in Behalf of Mr. *Annesley*, for a most flagrant Contempt of the Court, in not permitting *Sarah Wheedon* to pay Obedience to the Subpœna of the Court, but on the contrary, with a Gun in his Hand, swore by G--d she should not go. Secondly, The flat and peremptory Denial of a *Habeas Corpus*, on the Affidavits of her two Sons, that she was involuntarily detain'd by the said *Blakeney*; and in ordering those two young Men in so unprecedented a Manner to attend the Court the Day following, in Order to be examined *viva voce*, though there had been no Affidavits produc'd to contradict theirs; and afterwards committing them for a pretended Intention of imposing on the Court, when all present were well satisfied that no such Intention appear'd. As this Affair made a great Noise, and gave Mr. *Annesley's* Enemies afterwards an Opportunity of carrying this Woman clandestinely away, of practising upon her, and corrupting her in a most shameful Manner. It will not be improper to
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give the following Narrative of it, with all its Circumstances.

Some short Time before the Indictment of *Mary Heath* had by *Certiorari* been remov'd into the Court of *Kings-Bench*, *Edward Wheedon*, Son to the above-mention'd *Sarah Wheedon*, (who had formerly attended Mr. *Annesley*, as his Page, and knew him from his Infancy,) having informed Mr. *Mackercher* that he had found out his Mother, *Sarah Wheedon*, at one *Blakeney's*, in the County of *Galway*, who was a great Enemy to Mr. *Annesley*: And that until Mr. *Annesley* came into *Europe*, she lived at the Expence of her Son, (who was a Servant in the said *Blakeney's* Family) without being taken the least Notice of. But as soon as Mr. *Annesley* appeared, this old Woman was taken into Mr. *Blakeney's* Family under Colour of being a Servant: And further said, that she had declared herself to him in Favour of Mr. *Annesley*; and said she would do him Justice, if by any Means she could get out of that cursed Country, where she then was, and where she was afraid of being murder'd in case she spoke what she knew of Mr. *Annesley*; at the same time cautioning her Son to say nothing while there, of what he knew concerning him, otherwise he would certainly be knock'd on the Head, or have his Throat cut; for that he was there in the Midst of Mr. *Annesley's* Enemies.

Upon receiving of this Intelligence (which induc'd a great Suspicion that it was for some sinister Purpose, rather than to be of any real Service, that so old a Woman was taken into that Family at so

critical a Time) Mr. *Mackercher* immediately wrote Mr. *Blakeney* a civil Letter, and after one, another ; acquainting him with *Edward Wheedon's* Declarations concerning his Mother's Knowledge of Mr. *Annesley*, and requesting him as a Man of Honour to permit her, when call'd upon, to come and give her Testimony on a Commission then expeding at *Wexford* : But finding that he was to hope for no Answer from that Gentleman, he immediately dispatch'd her Son with another Person, to bring her to *Dublin*, with a Resolution in case she was detained, to bring her by *Habeas Corpus*.

When the above-mentioned *Wheedon* came within a few Miles of Mr. *Blakeney's* House, he met his elder Brother, who was a Servant in the same Family ; and had also known Mr. *Annesley*, when a Child with his Mother ; to whom he told, that, as his Mother, when he saw her last, had expressed a Desire of coming to *Dublin*, to do Mr. *Annesley* Justice, he was come for her. The other Brother immediately express'd his Approbation, and went directly to communicate the same to his Mother, who seem'd well pleas'd, and was coming out to speak with her Son ; when all of a sudden, the Alarm being given in the House, the Gates were immediately shut upon her ; and she called out from a Window to both her Sons to be gone, otherwise they would be murder'd. The said *Wheedon* returning to *Dublin* with his Brother, gave Mr. *Mackercher* an Account of the involuntary Detention of

of their Mother, who immediately directed what they said to be reduc'd into the Form of an Affidavit, in Order to move the Court of *Kings-Bench* for a *Habeas Corpus* : But as the Day appointed by that Court for the Trial of *Mary Heath*, approached, and as that afforded a favourable Opportunity of demanding her in a legal Way by *Subpæna* ; the swearing of these Affidavits, and the Motion to be grounded upon them for the *Habeas Corpus*, was deferred for some Days.

At length, however, finding upon the Return of the Persons, who went to serve the *Subpæna*, that the said *Sarah Wheedon*, was not only stopt by her said pretended Master, from yielding Obedience to the same, but that he swore by God, she should not go, and held a Gun in his Hand to intimidate the Persons who serv'd it, as has been before-mentioned : Then the Court of *Kings-bench* was moved, on the Affidavits of the two Persons who served the *Subpæna*, for an Attachment against the said *Blakeney*, for so flagrant a Contempt, which was flatly refused by the Chief Justice.

When that Motion was refused in this Cavalier Manner, there was another made for a *Habeas Corpus*, (a Writ never denied in Favour of any Subject illegally detained) on the Affidavit of *Wheedon's* two Sons ; that she was detained against her Will ; which was in like Manner flatly denied ; and the two Sons ordered to attend next Day, to be examined on the Table by the Court. Every one was

surprised at this extraordinary Proceeding, and could not conceive any Reason the Court could have to refuse the *Habeas Corpus*, or to call upon these two Persons in this unusual Manner, as they had no Way laid themselves open to Suspicion, nor had their Characters been in the least impeached, or any contrary Evidence produc'd; so far from it, that what they swore stood confirmed by the Testimony of the Persons who afterwards served the *Subpœna*.

The two young Men were next Morning brought into Court by Mr. *Mackercher*; and Mr. *Annesley*'s Council finding that so unprecedented a Step, could serve no other Purpose than to intimidate Mr. *Annesley*'s other Witnesses, (who were to be examin'd in the same Court on the Trial of *Heath*) strenuously oppos'd their being examin'd, but to no Purpose; the Court would not so much as hear them, but forced them upon the Table, and would at any Rate have them sworn: Sworn they were, and examin'd for three Hours without contradicting their written Testimony; whereupon the Chief Justice (being resolv'd at any rate to commit them) laid hold of a meer Quibble, which was rather to be ascribed to the Delay of not swearing the Affidavit immediately after it was drawn, and to the Fault of the Attorney's Clerk, in not inserting the Words *She was then detain'd*, in place of *She is detain'd*, than theirs, and order'd them to be committed for a Crime he himself could not readily find a Name for, but at length called it an Intention of imposing on the Court, than which it was no-
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thing less; as appear'd to all present by the Honesty, Candour and Simplicity of their Answers. It however, in some Measure, answer'd the Intention; for it gave my Lord *Anglesey's* Party an Opportunity of clamouring every where among Mr. *Annesley's* Witnesses, that two of their Number had been committed for Perjury, by the Court of *King's-Bench*, and that they would all be served in the same Manner as fast as they came before it; which was so far improved by Emissaries sent industriously among the Witnesses that came to Town for the Trial of *Heath*, that many of the weaker Sort were so intimidated, that they would not be examined in that Court; especially when they understood for what a slight Offence those two young Men had been so roughly handled: Bail in any Sum was offer'd for them, but no Bail would be accepted: No, that would not answer the Purpose of their being call'd for.

The Behaviour of the Bench in this Affair was the more remarkable, as the Affidavits of those two young Men were in the common Stile of all Affidavits of that kind: Their great Crime was in swearing on the Eighth of *November*, *Our Mother is detain'd illegally*, in place of saying *She was*, or *we believe she is illegally detain'd*: The Chief Justice very sagaciously reasoning thus; *They were at Blakeney's House the 30th of October, this Affidavit appears to have been sworn on the 8th of November, ; how could they swear on the 8th of November that their Mother is detained; when they saw her last the 30th of October.*

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By this Judge's Manner of reasoning, no one can swear in the Present Tense to any Fact the Moment it is past. It was very plain, to every one in Court, that those Men swore only to their Belief, they candidly told him so on their Examination; and it is the Practice of every Day to swear in that Stile, otherwise no one could swear in the Present Tense, that any thing is, except the very Instant it is before his Eyes.

The young Men were no sooner constituted in Prison, than a certain Great Man, remarkable for his Rancour against Mr. *Annesley*, who had no more Right than the Cham of *Tartary*, to meddle in this Affair, immediately dispatched a trusty Valet du Chambre, and another Person, well arm'd and appointed with a Letter to Mr. *Blakeney*, who immediately on Receipt thereof, deliver'd *Sarah Wheedon* up into their Hands. And in order to alienate her from Mr. *Annesley*, and to work upon her Passions, and dispose her not to do him Justice; She was made to believe, that he had thrown both her Sons into Prison; but as this, and the other infamous Arts, practis'd to seduce this Woman, are to meet with a more ample Discussion in another Place, we shall not anticipate it here.

Besides the above-mentioned Grievances, it is also alledged, that the Gentlemen who carried on the Prosecution against *Heath*, had several other Motions to make, before they left the Kingdom, against Lord *Anglesey's* principal Agents

Agents and Attorneys, as well for the Sake of public Justice as their own ; for Attempts to corrupt Jurymen ; to obtain a pack'd Jury ; to suborn and corrupt Witnesses, &c. As also, for abusing and maltreating of Witnesses, and pulling down their very Houses over some of their Heads : But perceiving that this Bench was resolved to refuse them every thing they demanded, how just or reasonable soever, they were obliged to desist, and to bear the Wrongs done them patiently.

The Gentlemen who carried on the Prosecution, finding the Bench dispos'd to oppose them in every thing, how reasonable and just soever it might be ; and being quite tired out by the affected, vexatious Delays interpos'd, (*which were always so managed, as to make the Trouble and Expence as great to them as possible,*) set out for England. All Ranks of People in the mean time, (well knowing how deeply the Chief Justice was interested) were greatly offended at so open and shameful a Prostitution of Justice, and much pitied those Gentlemen on Account of their ill Usage ; upon which Occasion, the Town swarm'd with Lampoons, and Epigrams.

The Party interested to screen this Woman, taking Advantage of the Absence of those Gentlemen, daily committed the most violent Outrages against their Witnesses : Some had their Houses pull'd down over their Heads ; others had their Debts privately bought up in order to distress them ; some were Way-laid by
Ruffians

Ruffians employ'd for that Purpose, beat and abused in a most shameful Manner; and all (whom they *durst*) were highly threatened with the Displeasure of the Court of *King's-Bench*, by Emissaries sent among them for that very Purpose; and were given to understand if they trip'd in the least they should be used worse than the two *Wheedon's* had been; *for that they would certainly be crapt.* Several have been distrained at improper Seasons, and cast into Prison for Rent by their Landlords, *whereof there are many in the County of Wexford, highly interested in the Event of this Suit.* Several other material Evidences, have been prevailed upon to abscond, and keep out of the Way.

These and many other wicked Arts have been employ'd by the Party to discourage and intimidate Witnesses: But they have of late contriv'd a Method of intraping them, which of all others is the most effectual and best calculated to shorten their Work; it is, by "employing three or four abandoned Persons to criminate them." Upon the Affidavits of these wicked Tools, the poor innocent People are immediately taken up by Warrants of some Justice of the Peace, of the Party, and thrown into Goal; where they are generally detain'd, untill they either give Bail, or change Sides.

This new Stratagem they have lately practis'd with great Success in the County of *Wexford*, where no less than five Persons living in different

different Places, remote from one another, have been taken up by Warrants from one *Palliser*, who to the great Disgrace of the Commission, is a Justice for that County, on the Affidavit of one beggarly Woman for *pretended Attempts to suborn her*; and Warrants are issued out against many more for the same pretended Crime, on the single Affidavit of this wicked Woman; tho' some of them do not so much as know her.

These simple innocent People were no sooner brought before this *righteous Magistrate* than he immediately (without any previous Examination) ordered them to Goal, on Foot, in stormy bad Weather, *by a round-about Way of twenty-four Miles*; and in the mean Time, it was industriously reported, in the Country round *Dummain*, by Lord *Anglesey's* Emissaries, that there were Warrants out against a great many more; and that they would all be treated in the same Manner, if they either went to *Wexford* to be examined on the Commission that was then expeding there, or appeared against *Heath*; which so intimidated many who feared the same Treatment, or to be held to extraordinary Bail, that they actually declined appearing to be examined.

As much depended in the Trial of *Heath*, on having a High Sheriff for the County of *Dublin*, who would enter into the Views of the Party; no Stone was left unturn'd to gain that Point: which it is plain they have perfectly well succeeded in,

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from the unusual Partiality shewn by the present Sheriff to the Traverser's Party, in granting them a Copy of the Pannel, several Days before the Day appointed for the Trial ; and contrary to Custom, and the usual Practice, flatly refusing it to the Agent for the Crown, who had at least an equal Right to it. But to be further convinced of it, one needs only cast an Eye over the List of the Pannel, which appears to have been chiefly composed of Persons, who (though Men of great Worth and Honour) either live *out of the Kingdom*, or in *remote Counties*, and never serve on Juries in the County of *Dublin* ; or, of such as are Six Clerks in *Chancery*, or have Employments in the *Custom-house* ; that require their constant Attendance, and thereby are particularly exempted from serving on Juries, or of *Persons dead several Years ago*.

If the high Sheriff's Intentions had been really honest, where was the Necessity (in a County abounding with so many Gentlemen of unquestionable Honour, Capacity and Fortune, who were at Hand, and would have attended) to *cull and pick* out so many Persons whom he was certain, neither could, would, nor were obliged to attend ? Is not the Inference plain and obvious to every Man of Sense ; that he intended no other than who did, should attend on this Occasion ?

The Chief Justice did indeed say in *Vindication of the Sheriff*, that every one in the Pannel were obliged to appear, and to give their Reason

Reasons why they could not attend. But with all humble Submission to his Lordship, I cannot help thinking, that it would be no easy Matter, to convince Gentlemen who attend the Service of Parliament in *England*, of the Justness of this Rule of Court, and I dare be bold to say, that his Lordship, would excuse the Non-Appearance of dead Men upon that Pannel.

Heath's Party over-and-above the Advantage of so complying a Sheriff, had moreover taken Care long before the Trial, to provide themselves from *London*, with Copies of all the Affidavits, that had been filed in the Attorney General's Office, to prove Mr. *Annesley's* Right to the Peerage; which gave them a very great Advantage, as they thereby knew what each Witness produced against her, could say, long before the Trial; and consequently had prepared Evidence to contradict them, which it is alledged, that Party are never at a Loss for on any Occasion.

As the Success of this Trial, on the Part of the Prosecutors, in a great Measure depended on the Presence of Mr. *Mackercher*, who alone was acquainted with the Evidence proper to be produced and applied to the Conviction of this Criminal; and as that Gentleman had been for several Days past, detain'd by contrary Winds, on the other Side, together with several of the most material Witnesses: And as others of the most material Witnesses against the

Traverser, namely, Col. *Weldon*, and Col. *Kenny*, were very ill, and could not attend; the Agent for the Prosecution, thus unprovided could not go to Trial, he therefore very prudently came to a Resolution to put it off till next Term; never doubting but the Court would immediately have granted so reasonable a Motion without the least Hesitation; as he had an undoubted Right, confirm'd by the general Practice of all Courts in like Cases, to demand and expect it: But more especially, as the Traverser had, as has been already mentioned, by the singular Favour of the Court, on her Part, been three several Times indulg'd in putting it off. But as the Reasonableness or Unreasonableness of putting off this Trial till next Term, will best appear from the Arguments and Proceedings in Court, upon this Motion, I shall here insert the Substance of them.

On *Monday* the Fourth of *February*, Mr. *Sol. General* for the Crown, before he would proceed to make any Motion for putting off the Trial, complain'd to the Court that the High Sheriff had been several Times applied to, as usual, by the Agent for the Prosecution, for a Copy of the Pannel; but he had not yet been able to procure one, though it had been given the other Party several Days before.

L--d C--f J--ce. The Sheriff cou'd not give it without Leave of the Court.

Mr.

Council for the Crown. It is never usual to apply to the Court, but the Sheriff always grants Copies of the Pannel, at the Requisition of the Parties, and there is scarce a Precedent of the Court's being applied to on such Occasions; but supposing that to be the Case, my Lord, why should one Party have it, and the other be refused it?

Mr. Spring, for the Traverfer. The Gentlemen concerned on the other Side, have served us with Notice of Motion to put off the Trial, and therefore, we hope, they shall make their Motion accordingly.

Mr. Sol. Gen. We desire first to see if there be a Jury; and we have a Right to know if the Jury have been rightly summoned.

The Bailiffs having been called to prove their summoning, the Gentlemen mentioned in the Pannel appeared, were sworn, and the Pannel was called over.

Mr. Sol. Gen. I observed, my Lord, that many of the Gentlemen mentioned in this Pannel, are well known to be out of the Kingdom; several of them live in distant Counties; and out of the County of *Dublin*, others by Reason of the Infirmities of old Age, have not been able to serve on Juries for several Years. Several others are *Six Clerks* in *Chancery*, and hold Employments in the *Custom-house*, that require constant Attendance, where-
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by they are exempted from serving on Juries; and others have been dead several Years.

Mr. *Marshal* for the *Crown*. Two of the Pannel, Mr. *Towers*, and Mr. *Powel*, are *Six Clerks*, and Mr. *Sandford* is an Officer in the *Custom-house*; Officers, People abroad, others in distant Counties, and Men dead several Years ago summoned, Good God! what a Pannel!

(The Pannel being called over again, eight only of the Jury appeared.)*

Mr. *Sol. Gen.* My Lord, I see only eight Gentlemen of the Jury attend, and I can't help observing, that it looks as if Mr. Sheriff's Intention was that no more should attend: So that if both Sides had been prepared, there could have been no Trial to Day; for almost all the rest of the Gentlemen, named in the Pannel, are either exempted from serving, by being Members of Parliament, or by Means of their Employments, or are disabled from attending by Absence, the Infirmities of old Age, or by Death.

L. C. J.

* It is remarkable that the *Thursday* following, a full Jury appeared; some of whom had Expresses sent for them sixty or seventy Miles into the Country, particularly *Charles Narcissus Preby*, who made a Declaration before he set out, that he would eat his Boots, rather than find her guilty. And upon his Way to Town endeavour'd to ensnare one of the Witnesses for the Crown, whom he accidentally met on the Road.

L--d C--f J--ce. All Persons summoned ought to appear, and then shew Cause, why they should be exempted from serving. We had some Thoughts of bringing on the Trial next *Wednesday*, but there is a Sitting of *Nisi Prius*, that Day, and other Suitors are not to be injured. Let the Trial be put off till *Thursday*; but the Attorneys should consent: *Mrs. Heath*, Do you consent it should be put off?

Mary Heath. Yes, my Lord.

(The Agent for the Prosecutors was asked, whether he would consent to bring it on a *Thursday*; but he said he would not, and that he had no Authority to come into any such Consent).

L--d C--f J--ce. The Reasons we have heard to Day for putting off the Trial, I can tell you, will not be thought sufficient next *Tuesday*, for putting off the Trial. The great Expence attending this Trial ought to be saved; and therefore, the sooner the Trial comes on, the less expensive it will be to the Parties.*

Mr. Sol. Gen. We intended to have tried this Question to Day, but *Mr. Mackercher* who conducts this Affair, is on the other Side of the Water, and so likewise are some of our
most

* It were to be wish'd, his Lordship had thought of this, last Term, when the Gentlemen concerned in the Prosecution, had been at a very great Expence in preparing three several Times for the Trial.

most material Witnesses, who are daily expected. There could have been no Trial to Day for want of a Jury, if Mr. *Mackercher* and our Witnesses arrive, we will immediately go to Trial, if not, we cannot.

Mr. *Broadstreet* for the *Traverser*, I hope, my Lord, that both Parties will be confin'd to particular Hours to examine their Witnesses; I humbly conceive both Parties should examine each an Hour by turns.

Mr. *Harward* for the *Crown*. Such a Rule was never made on Trials of this Kind.

L--d C--f J--ce. Examining by Hours is not so unprecedented, it was an old custom among the *Romans*. Ergo

Thursday Morning the 7th of February, the Court being sat.

Mr. *Soll. Gen.* My Lord, last Monday I mention'd to your Lordship, that Mr. *Mackercher*, and some of our most material Witnesses, were on the other Side of the Water, waiting to come hither with the first fair Wind; if they had arriv'd we should willingly have proceeded to try this Traverse to Day, but it has so happen'd (contrary to our Expectation) that they are not yet arriv'd. Col. *Weldon*, my Lord, who is known to be a Gentleman of great Worth and Reputation, and who is a very material Witness in Behalf of the Crown in this Case, is extremely ill in his Bed in the Country with the Gout;
and

and therefore, as we are not furnished with our material Witnesses; or any Person, acquainted with the Evidence proper to be applied, to prove the Facts in the Indictment; we cannot with Safety go to trial at this Time; and humbly move your Lordship that it may be put off till the first Day of next Term.

The Traverser, My Lord, remov'd this Indictment in *Octob.* last, by *Certiorari* from the Commission of *Oyer* and *Terminer* into this Court, on the very Day it was to have been tried, without giving the Gentlemen for the Prosecution any previous Notice. When she appear'd on her Traverse in this Court on the 7th of *November*; Upon her bare Allegation that she was not prepared then to take her Trial, she had till the 14th given her to prepare herself for it. Notwithstanding this Indulgence, she on the 13th, the Day immediately preceeding that appointed by the Court for her Trial, by her Council mov'd again to put it off till this Term, on a single Affidavit of the Traversers, that she had some material Witnesses * in *Eng-*

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* The material Witnesses, the Traverser Swore, she had in *England*, were her own Daughter, and a Woman call'd *Judd*, neither of whom had ever been in *Ireland*; consequently could be of no Use to disprove Facts that happen'd in the County of *Wexford*; and it now appears that neither of these, or any other Witness, that she could not with Ease have had in less than four Day's Time, were produced by her on her Trial.

land and in remote Places of this Kingdom; and upon that Foundation alone, her Trial was put off till this Term. We, my Lord, have given Notice to the Agent for the Traverser, that we would apply to put off the Trial; Affidavits we have to shew that we are not prepared to come to Trial this Term. If your Lordship pleases that Mr. *Mackercher's* Affidavit Sworn the 13th of *November* last, which was read upon the Traversers Motion to put off her Trial last Term, may be now read.

Court. Let Mr. *Mackercher's* Affidavit be read.

The purport whereof was, that the Deponent had sent to *England*, and several other Counties in this Kingdom, for Witnesses against *Mary Heath*, in Expectation that she would be tried on the Commission of *Oyer and Terminer*, held for the County of *Dublin*, on the 24th of *October* last. That a great many of such Witnesses came to the City of *Dublin* from *England*, and several remote Parts of this Kingdom, in order to be examined in behalf of his Majesty on the said Trial; but her Indictment having without any previous Notice been remov'd by *Certiorari* to the Court of *King's-Bench*, and she being bound to prosecute her Traverse this term, this Deponent sent many of said Witnesses (who live in this Kingdom) out of Town, and

and others of them who are old, and infirm, and live in remote Parts; and also the Witnesses who came from *England*, Deponent kept at a considerable Expence in Town several Weeks.

That the said Trial being appointed to come on the 14th of this Month, Deponent sent to several Counties in this Kingdom for many of the said Witnesses, that were before in *Dublin* to give Evidence against said *Heath*.

That some Witnesses material to be examined against said *Heath* have a Call to *England*, upon Business of very great Importance, and other material Evidences against said *Heath* on her Trial, are very old and infirm; so that if her Trial should be put off till the next Term, it will put the Prosecutors to very considerable Expences, and Hardships; and be highly inconvenient to, and almost impossible for several other Witnesses (who are oblig'd as soon as they can to go to *England*) to attend in this Kingdom, in the next *Hilary* Term, without neglecting Affairs of the greatest Consequence; and besides several other material Witnesses who are old and infirm may die, and become so weak and infirm as not to be able to attend the next Term; so that Deponent believes the said *Mary Heath's* Application to put off her Trial, is intended to put the Prosecutors to great Expence, and to avoid, or postpone as much as she can, her being tried: And if said *Heath's* Trial should be put off till next Term, she will not, nor can she be so effectually prosecuted as she now

would be, in Regard, that several very material Witnesses against her will be under a Necessity of being in *England* the next Term. And for Want of such Evidence said *Mary Heath* may be acquitted; whereas, if they attended she would be found guilty of Perjury, as Deponent believes; and Deponent is credibly inform'd, and verily believes, that said *Mary Heath*, from the Assurances given her of her Trial being put off, has not taken out one Subpcena, or taken any Steps to prepare for the same, tho' she has had sufficient Time, but wholly relyeth on the Indulgence of this Court.

Mr. Serjant *Marshal* pray'd that Mr. *Nelson's* Affidavit might be read.

Court. Read his Affidavit.

The Purport whereof was, that he lately received Letters from *Daniel Mackercher* Esq; dated at *London* the 10th of *January* last, acquainting him he was to leave *London* the 17th of the said Month, in order to come into this Kingdom, to carry on the Prosecution against *Mary Heath*; he being one of the principal Persons concerned in carrying on the same. That he believes the said Mr. *Mackercher* is, and has been at *Park Gate* or *Hollyhead* with several Witnesses, material to be produced against the said *Mary Heath* upon her Trial, waiting for a Passage; and that an effectual Prosecution cannot be carried on against her, untill the said Mr. *Mackercher* comes into this Kingdom.

Mr. Serjant *Marshal* also prays, that the Affidavit of *Robert Kennedy* may be read, which
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being accordingly read, purported that the 27th of *January* last, he served *Arthur Weldon* Esq; with a Subpœna to attend the Trial of *Mary Heath*; that *Mr. Weldon* told him he would willingly attend, but that he was so ill of the Gout that he could not stand, or scarce stir; that the Week before he had the Gout in his Stomach, and could not go such a Journey without great Danger of his Life: That he believes the said *Mr. Weldon* is a very material Witness against *Mary Heath*, and that she cannot be effectually prosecuted without his Testimony; and believes he would readily attend to give Evidence if he could do it without endangering his Life; and believes he will attend to give Evidence in behalf of his Majesty, in Case her Trial is put off till the next Term.

Mr. Tisdale for the Crown. My Lord, It is the Interest of Society to bring Offenders to Justice. The Gentlemen who conduct this Prosecution were fully prepared for a Trial, and the Trial going to begin when remov'd by *Certiorari* into this Court, and since it was remov'd, there were several Days appointed for Trial last Term. The Witnesses came to Town from several Parts at great Expence; but in Regard the Traverser was not then ready, the Trial was put off, which put the Prosecutors to great Hardships in preparing at two different Times for the expected Trial. The Affidavits which have been read, have mentioned that some of our Witnesses are on the other Side of the Water, and that Colonel
Wel-

Weldon has been serv'd with a Subpœna, and would attend if possible ; and for these Reasons, we hope, your Lordships will put off the Trial till next Term.

Court. Was Mr. *Weldon* bound over ?

Mr. Nelson. No.

Mr. Daly, for the *Trav.* I would humbly inform your Lordships, that when the Prosecutors applied to push on this Trial last Term, there was no Pretence then offered, that Mr. *Weldon* was a material Witness for them. I pray that *Mary Heath's* Affidavit may be read, (which was accordingly read ; and the Purport thereof was, that she had several Witnesses in several Parts of this Kingdom, and some in *England* ; and that she could not with Safety go to Trial, without the Benefit of their Testimony).

Mr. Recorder for the *Trav.* The Bill was found in *October*, upon the Commission of *Oyer* and *Terminer* ; and the Reason of moving the Indictment by *Certiorari* was, that it was impossible for the Traverser, in so short a Warning, to prepare for her Trial ; and it so happening, that the *Michaelmas* Term was so close upon the Heels of the Time the Indictment was form'd, she could not collect all her Witnesses from the remote Parts of this Kingdom, and from *England*, to prepare for this Trial : And therefore, could it be imagined that it was to delay Justice, when the Traverser was only endeavouring to have an Opportunity of making a
proper

proper Defence. The Prosecutors then said they were ready, and pray why are they not so now? Is there not the same Reason to be prepared? If they put themselves to unnecessary Expences last Term, in preparing for Trial, the Fault of that is to be imputed to themselves; they had Notice given them that Application would be made to postpone the Trial.

Council for the Prosecutors. We had very short Notice, and not till the Day immediately preceding the Day appointed for Trial, and after they knew that all our Witnesses were sent for, and come to Town.

Mr. Recorder. The Traverser has been at great Expences now in bringing her Witnesses to *Dublin*, and the Reason that was offered last Term for putting off the Trial, can't now subsist, because both Parties had sufficient Time to make the necessary Preparations for Trial. Pray, my Lord, what Foundation have they now offered to put off this Trial.

Council for the Crown. Both Parties had full Time to prepare for Trial last Term.

Mr. Recorder. *Robert Kennedy*, by his Affidavit swears, that *Mr. Weldon* is a material Witness, without giving any Account, how he knows him to be so. This Person, who is only a Server of *Subpœna's*, ventures upon his own Knowledge to judge, what is, or what is not material. If the Agent in the Cause had sworn it, there might be some Reason to rely upon it. If the Trial is put off this Term, my Lord,
upon

upon this Affidavit, another Witness may be found next Term, who may be thought equally material ; so that this Woman, before she can have an Opportunity of justifying herself, may die under the Imputation of the Crime charged in the Indictment. If they had produced the Affidavit of any Physician, who attended Mr. *Weldon*, to certify his Illness, and Inability to come to Town ; it would surely have been more proper than the Assertion of a Server of *Subpœna*'s. Besides, my Lord, a Man in the Gout, though he can't walk, might be able to travel ; but how a Person who is neither Attorney, or Agent in the Cause, and who is not to be presumed to be in the Secrets of the Prosecutor, can swear that Mr. *Weldon* is a material Witness, is somewhat very extraordinary ; besides, my Lord, since the Time of Service of the *Subpœna*, which was the 27th of *January*, he may have so recovered, as to be able to come to Town, though he was then indispos'd : But why was not this Gentleman thought of last Term, when the Prosecutors said they were ready. Therefore considering the Circumstances of this Case, I hope your Lordship will not put off the Trial.

Mr. *Sol. Gen.* My Lord, I apprehend, that the Bill of Indictment was found against Mrs. *Heath* the 24th of *October* ; yet Application was made by her on the 13th of *November* last to put off her Trial : She had that Interval of Time to prepare, but because she swore that she

she had some material Witnesses, who were necessary for her on her Trial, it was put off. I hope, my Lord, the Reasons which we offer, will have the same Weight, and that we shall be in like Manner indulg'd, till we can be properly prepared. Mr. *Mackercher*, who is one of the principal Managers of this Prosecution, and without whose Presence it cannot be carried on effectually, is detain'd on the other Side of the Water by contrary Winds; and if this Cause should be put off till the next Term, he may, and most probably will be here; therefore, I hope, we shall have the same indulgence as the Traverser had, and that this Trial shall be put off till next Term.

Court. In the Affidavit of *Robert Kennedy*, there is no Addition to his Name, which is not very common in Affidavits.

Mr. *Sol. Gen.* The Person himself is in Court and ready to be produced, if the Court require it. (The Court seeming inclined to examine *Robert Kennedy*, he was call'd in and sworn.)

Court. How do you know that Col. *Weldon* is a material Witness for the Prosecutors in this Cause?

Rob. Kennedy. Col. *Weldon* was sworn before a Master in Chancery, at the last Assizes of *Maryborough*; I was present, and was employ'd by Mr. *Annesley*, to bring Mr. *Weldon's* Affidavit, along with others to *England*, to lay before the Attorney General there; and I was desired to be present at the swearing of their Affidavits, in order to prove the due taking of them.

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Court.

Court. In what Cause was that Affidavit made?

Rob. Kennedy. It was in the Cause of Mr. *James Annesley*, against the Right Hon. *Richard Earl of Anglesey*.

Court. Are you a Judge of what is, or what's not material Evidence in a Trial of Perjury? And how can you take upon you to know, that what Mr. *Weldon* has to say, would be material?

Rob. Kennedy. I only judge from Mr. *Weldon's* Affidavit, which I saw on the Occasion I told your Lordship.

Court. What is your Occupation in Life?

Rob. Kennedy. I keep a Beer-house, and import a great Quantity of Beer every Year from *London*, and sell a great deal by Wholesale.

L--d C--f J--ce. Such a Sort of a Man is not a proper Person to distinguish what is, or is not material Evidence. And I must remark, that no Affidavit was made till Yesterday, that Mr. *Weldon* was a material Witness.

Mr. Serj. Tisdale. The Public, my Lord, is concerned in this Prosecution, and Trials of this Kind, have frequently been put off, on Behalf of the Crown, upon Affidavits of material Witnesses not being able to attend; we hope the Crown is at least, entitled to the same Indulgence, as was given last Term to the Traverser, on her Application to the Court. Why should she, my Lord, who by affected Delays, has put off the Trial so often before, be suffered to take Advantage of our Weakness at present?

Mr.

Mr. *Daly*. I would observe to your Lordships, that Mr. *Livingston* on the 11th of November last, swore an Affidavit before a Master in Chancery, in a Suit of Mr. *Annesley* against Lord *Anglesey*; that Col. *Weldon* was in so bad a State of Health, that it was feared the Plaintiff would lose the Benefit of his Testimony, unless he was examined *de bene esse*; yet on the 13th, which was but two Days after this Affidavit, the Prosecutor pushed to have this Trial brought on; so that it is plain, they then thought they might proceed without Mr. *Weldon*'s Evidence. My Lord, we have the Copy of Mr. *Livingston*'s Affidavit, which we beg may be read.

Mr. *Harward*. Mr. *Livingston*'s Affidavit was made in the Court of Chancery in another Cause, and therefore we hope it shan't be admitted to be read in this; besides, what they produce is only a Copy.

Court. You do not object then to the reading the Affidavit but a Copy of the Affidavit. Pray, is not the Affidavit of Record, and ought not the Copy of a Record to be admitted to be read.

Mr. *Daly*. Suppose a Person was charged with Perjury, in his Affidavit made in the Court of Chancery, might not the Affidavit be laid before the Grand Jury.

Court. Gentlemen for the Prosecutor, shew us a Precedent against Mr. *Livingston*'s Affidavit being admitted to be read.

Mr. *Harward*. I beg leave to put your Lordships in Mind of the Case of *Edgeworth* against *Edgeworth*; besides, my Lord, tho' Col. *Weldon* was then in such a State of Health, as to render it prudent to have him examined, *de bene esse*, he might notwithstanding, have been in a Condition to attend the Trial last Term.

Court. Are not Affidavits in the *Spiritual* Court read here on Prohibitions; there can no Precedent be shewn, why the Copy of Mr. *Livingston's* Affidavit should not be read,

(Then *Arthur Mac Guire* was sworn, to prove he had compared the Copy which he had in his Hand, with Mr. *Livingston's* Affidavit on Record, and that it was a true Copy thereof).

(Then the Copy of Mr. *Livingston's* Affidavit was read, and was of the Date and Purport opened by Mr. *Daly*).

Mr. *Walsh*, for the *Crown*. My Lord, if there was no other Foundation to put off this Trial, but the Affidavit of Mr. *Weldon's*, being a material Witness, I humbly apprehend it would be a sufficient Reason; the Person who made the Affidavit has been examined before your Lordships, he has mentioned why he believes he was a material Witness. And though he is not a Person of such great Distinction, as Mr. *Daly* would require him to be yet he is a very creditable honest Man, and has a Right to be believed on his Oath, as well as any other.

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But, my Lord, there are several other Witnesses sworn to be material to attend on this Trial, who can't possibly attend, if it comes on now: It is true, they are not named, because it may not be proper to disclose who they are; it is enough that they are sworn to be material, and surely we are entitled to this Indulgence. We were ready to come to Trial last Term, and though we should not then have had the Attendance of Mr. *Weldon*, yet we might then have other Witnesses to prove the Point, for which we now want his Evidence. Those other Witnesses we have not at present, and therefore considering the Difficulties we are under at this Time, we hope we shall be indulg'd for once, as well as the Traverser has so often been before.

Court. Gentlemen, Did you ever know of a Trial under these Circumstances, to be put off without paying Costs?

Counc. for the Prosecutors. There was the same, and stronger Reason last Term, for the Traversers paying Costs, and yet it was denied us.

Mr. Harward. My Lord, this Bill of Indictment comes here as well supported as any Indictment that was ever brought into this Court: I say it is supported by a Verdict found by twelve Gentlemen, of as great Reputation and Character, as ever were upon any Jury, who had it for fourteen Days under their Consideration. There is no Colour, my Lord, to suspect
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this of being an idle or wanton Prosecution; the Indictment was remov'd into this Court by *Certiorari*, by the Traverser, and I beg leave to say, that a *Certiorari* is not a Writ of Right at the Instance of the Subject, but a mere Matter of Favour. Besides that the repeated Indulgence given to the Traverser, in not bringing on her Trial last Term, has been mentioned already; and as this Prosecution is on Behalf of the Crown, we hope an equal Hand will be carried between his Majesty and the Subject. Mr. *Mackercher* swore last Term in his Affidavit, that some material Witnesses to be examined in this Cause, had necessary Calls to *England*, and that if the Traverser's Trial should be put off till this present Term, it would be almost impossible for him or them to attend; nay, it was plainly told the Court they could not attend, and we find in Fact that they are not here. It is sworn, that several material Witnesses are believed to be on the other Side of the Water waiting for a fair Wind; which Accident, I say, adds Credit to Mr. *Mackercher*'s Affidavit: for it is fallen out as he said, that if the Trial was postponed, it would be next to an Impossibility for him and his Witnesses to attend.

Mr. *Nelson* has mentioned a Letter he received from Mr. *Mackercher*, and that he expects him the first fair Wind. *Kennedy* has mentioned in his Affidavit, the ill State of Health of Col. *Weldon*, and that he is a material Witness.

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As to the Objection that *Kennedy* is not Agent or Solicitor in the Cause, and that therefore he cannot know, whether *Mr. Weldon* is, or is not a material Evidence, I humbly insist, my Lord, that it can have no Manner of Weight; for *Kennedy* has told your Lordships, that he was present when *Mr. Weldon* swore his Affidavit, and had the Custody of it, and therefore must know the Purport thereof, and how far his Testimony may be relative to this Trial. I beg leave to say, that the single Testimony of *Mr. Weldon*, as he is a Gentleman of an unexceptionable Character, might be put in the Scale against many Witnesses not so well established in Point of Reputation, and the Want of his Evidence is a sufficient Motive to postpone the Trial.

I must further observe to your Lordships, that last *Monday*, there appeared in the Box only eight of the Jury mentioned in the Panel; so that if both Parties had been prepared, the Trial could not have come on that Day, so that in Fact, this is the only Time of our applying to put off the Trial: We only ask to have it put off till next Term, and therefore, I hope, your Lordships will grant us this Indulgence.

Mr. Mac Manus for the Crown. My Lord, it fully appears from the several Proceedings, what affected Delays have been given by the Traverser, to postpone her Trial to this Term.

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The Bill of Indictment (as has been already observed) was found in *October* last, and the Traverser to postpone her being tried at the then Commission of *Oyer and Terminer*, brought a *Certiorari*: So that I beseech your Lordships, to consider that the Indictment comes into this Court at the Prayer of the Traverser. The Court, I humbly apprehend, ought not to have granted it, except at the Instance of the King; because every Indictment being at the Suit of the Crown, the King has a Prerogative of Suing in what Court he pleases; but at the Request of the Defendant, a *Certiorari* is seldom granted, for the removing of an Indictment before the Justices of Goal Delivery; and very rarely, if ever, for removing an Indictment for Perjury, Forgery, and other such heinous Misdemeanours; in regard such Crimes deserve all possible Discountenance, and that the granting of a *Certiorari* might delay, if not wholly discountenance the Prosecution, and so it is deliver'd in *1st Sid. 54.*

It is likewise there deliver'd as Law, that if a Cause be removed out of an inferior Court, it ought to be tried the same Term that it is remov'd, that the Party may not be delay'd by the *Certiorari*. But my Lord, in the present Case, after it had been remov'd, and the Traverser appear'd on her Traverse in this honourable Court, on the 7th of *November*, she had Time given her till the 14th, and from thence till this Term.

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The Prosecutors very justly opposed the Motion for delaying the Trial till this Term, in regard they had been at great Expence, and several Times prepared for it; yet on the Affidavit of Mrs. *Heath*, that she had not some of her Witnesses ready, it was postponed: So that I may say, my Lord, that this Trial was put off at her Instance, at a Time, when by Law, she should; and ought to have been tried, and these Gentlemen had a Right to demand it.

There has been an Affidavit read to your Lordship, shewing how material Mr. *Weldon's* Evidence is, and that he cannot now attend, but that at the next Term it is hoped, he will be able to give his Attendance, which is a strong Motive to put off this Trial in behalf of the Crown: I beg leave, my Lord, to say, that the Case of an Indictment, is not like that of an Information. The Promoters of an Information may be guilty of a Default, but no Laches or Default can be imputed to the Crown, at whose Instance, all Indictments are supposed to be.

My Lord, as it would be criminal to punish the innocent, it is no less so to let the guilty go free. Your Lordship put off this Trial last Term, lest the innocent (which the Traverser was presumed to be, till the contrary appeared) should be punished; and I am sure, my Lord, you will be equally careful this Day, not to let the guilty escape; which may be the Case, if the Prosecution be now hurried on, not only

in the Absence of several material Witnesses, who by Sickness, and other Accidents, are prevented attending; but in the Absence of the Person who conducts it: For these Reasons, I hope, your Lordships will put off the Trial till next Term.

Mr. Callaghan for the Crown; In all Cases, my Lord, where any Indulgence can be shewn, it is granted to the Crown; yet I don't say but publick Justice should be properly and equally administred. The Accusation founded on this Indictment carries a great Degree of Presumption, though not of Conviction. The Objection of *Kennedy's* not knowing whether *Mr. Weldon* is a material Witness or not, with great Submission can have no Force; other Persons may sometimes know who are material Witnesses, as well as Men of Business. If a Person stands unimpeach'd in his Character, there can be no Objection to his Testimony. It is every Day's Experience to put off Trials; if it appears that a material Witness is visited with Illness, and can't attend; besides in the present Case, several are absent.

As to what is offer'd on the other Side, that this might be a Foundation for pretending the Absence of other material Witnesses next Term. That, my Lord, will have no great Weight; for by the same Reason, no Trial could ever be put off for want of material Evidence. Moreover, my Lord, if the Trial be put off till next Term, and the Traverser should happen to be acquitted, it will
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be so much more to her Honour; but if she escapes for want of a proper or effectual Prosecution, she will not stand as unimpeached from publick Censure, as otherwise she would.

It has been already mentioned what Expence we were put to last Term, which might have been sav'd, if we had known that her Trial was to be delay'd; but Care was taken that it should not be known, till the Prosecutors had been put to as great Charges as if the Trial had come on: We only ask the same Indulgence, and as great Inconveniencies must arise to the Prosecutors, if this Trial should not now be postponed, I hope your Lordship will put it off.

Mr. *Harding*, This is a Cause, my Lord, of very great Consequence and Importance.

The Crime wherewith Mrs. *Heath* is charged is of such a Nature, that if she be guilty of it, she can scarce be punished too severely; for our Lives, our Characters, and Estates, and all Questions whatsoever concerning Property, must ultimately depend upon, and be determined by the Testimony of Witnesses; the publick is therefore greatly interested to have a fair and impartial Enquiry into this Affair.

My Lord, wherever there is a Contrariety of Testimony, the Jury can have no Way of determining their Judgment, but by considering and comparing the Credit and Character of the Witnesses. In this Case, there is, perhaps, the greatest Contrariety of Evidence that ever yet

appeared, and as Col. *Weldon's* Credit and Character are so well known, it is of the greatest Importance to the Prosecutors, to have the Trial put off, till we can have the Benefit of his Testimony.

It appears here that there are several of the Prosecutor's material Witnesses, who cannot now attend the Trial; if therefore the Motion be not granted, there can be no Trial, I mean no effectual Trial, for the Consequence must be, that Mrs. *Heath* must be acquitted for want of Prosecution; and this Question will still be in the dark, and the Traverser must still lie under the Imputation in the Opinion of the World; whereas if the Trial be put off till next Term, the Prosecutor can be ready with his Witnesses; if she is innocent, she may be acquitted with Honour, and for this Reason I wonder the Gentlemen of the other Side, are so very urgent to bring on the Trial: And I must beg leave to say, that Mrs. *Heath's* pressing on the Trial this Day, when she knows the Prosecutor is not ready, is an Argument that she knows herself guilty.

My Lord, the Gentlemen have laid a great Stress upon the Objection, that *Robert Kennedy* could not know that Col. *Weldon* was a material Witness; the Charge in the Indictment is that Lady *Altham* was not with Child, nor ever had a Child at Dunmain. This, my Lord, is a plain Matter of Fact, which does not require any extraordinary Capacity to judge of: Surely Mr. *Kennedy* may easily know whether what is charged

charged to be sworn by Mrs. *Heath*, be contradicted by the Affidavit of Col. *Weldon*, which he says, he has read, and had in his Custody : Besides, my Lord, from the Conversation that *Kennedy* had with Col. *Weldon*, that he would willingly attend, but that he was so ill, he could not then venture his Life to travel. I say, with humble Submission, from this very Declaration it must be presumed, that Col. *Weldon* is a material Witness. Pray, my Lord, if Mr. *Weldon* was not a material Evidence, would he not have told Mr. *Kennedy* at that Time, that there was no Occasion for his coming to Town, that his Testimony could be of no Use ; or made Use of some Expressions to that or the like Purpose.

The Gentlemen who are concern'd for the Traverser, pretend they have a Copy of Col. *Weldon's* Affidavit, and some of them offer to admit it to be read on the Trial. My Lord, if they have any such Copy, we know nothing of it, nor have we the Original, nor any Copy to compare with it, and therefore as it cannot be attested, we can't depend upon it ; besides, if Col. *Weldon* was able to attend, his Testimony may possibly go farther than the Affidavit.*

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* Afterwards when the Court would not put off the Trial, Mr. *Harding* desired the Traverser's Council to produce Col. *Weldon's* Affidavit, and to admit it as well as Mr. *Goosfrey's* Examination to be read ; but this was refused, though before propos'd by Counselor *Spring*.

As this is a Matter, my Lord, of very great consequence, and if the Prosecution cannot be effectually carried on, the Traverser must be acquitted (tho' Guilty,) and as the publick have a right to an Impartial enquiry, and as it can be of no Inconvenience to Mrs. *Heath*, if this Trial be postpon'd, but will be the greatest Service to her if she be acquitted with Honour on a fair Trial, therefore we hope her Trial will be postpon'd till next Term.

It was further observed by the Council for the Prosecution, that the Traverser had put her Trial off three several Times. That those affected delays on her part were by so much the greater Hardship on the Gentlemen who carry on the Prosecution on Behalf of the Crown, as they had not only postponed Business of the highest Consequence to them in *England* in order to attend it; but as the Traversers Intentions of moving for Delay had always been industriously concealed from them untill the very Day that her Trial should have taken Place, or the Day immediately preceeding it: By which Means they were each of these three times put to the same Trouble and Expence as if they had actually tried her with Effect. This Proceeding, my Lord, to all disinterested Persons, must appear not only vexatious; but calculated to promote the oppressive System of this unfortunate Gentleman Mr. *Annesley's* too powerful Enemies, of worrying him and his Friends out by unnecessary Expence and Delay. This
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Woman must have known her own Intentions of putting off her Trial till this Term, early enough to have given Notice of it to those Gentlemen, so as to have prevented the great Expence of Money, Loss of Time, and the great Trouble they and their Witnesses have been at in preparing so often for her Trial; while she remain'd in a Supine Security of having it delay'd, and rely'd wholly on the Indulgence of this Court without taking any one Step to prepare for it. We therefore hope, my Lord, that for these and many other weighty Reasons already mentioned, we shall this Day for once meet with the same Indulgence with the Traverser of putting off this Trial till next Term, especially as this is the first Application of that kind we have made, and as we have so good a Right to expect it.

[The Court said, they did not think the Reasons urged by the Council for the Crown, sufficient for putting off the Trial; but as the Motion had taken up a great deal of Time, (so that it would be impossible for them to go thro' it that Day) they were pleas'd to order, that the Trial should come on the next Morning, and said, they would be sitting by Eight o'Clock.]

During the whole Debate upon the Motion, which lasted for above six Hours, the Court in every thing lean'd against the Prosecutor: Strong Insinuations, and Innuendos were given to the Jury, as if it was a malicious Prosecution: The Trial in the Exchequer was treated as a Farce
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and a Juglar's Trick: Nay, the C---f J---ce plainly told from the Bench, *That he was not to be influenc'd by that Verdict; that the Tricks of the Juglar would not perhaps pass a second Time, however they might have succeeded once.*

The Sollicitor for the Prosecution having no other Alternative given him by the Court, then to let the Criminal escape for want of Prosecution, or to proceed to Trial; and looking upon it as an Injustice done to Society to let a Crime of so deep and atrocious a Nature escape unpunished; came by the advice of Council to a Resolution of proceeding to Trial next Day, provided there were a Jury.

The Traverfer's Party, (who till now trembled for the Event, and had given her up for lost) finding Mr. *Mackercher* absent; the Sollicitor for the Crown divested of many of the most material Witnesses; a propitious Bench; and every thing carry so favourable an Aspect for them; took special Care to have a full Jury the next Day; accordingly on *Friday* the 8th of *February* the Trial came on.

As the C---f J---ce was known to be several thousands of Pounds interested, it was expected he would that Day have left the Bench, or at least have carried the Scale so equally, as to have left no Room, so much as to suspect that *Self-Interest or Prepossession* any way govern'd his Conduct: But the contrary soon manifested itself in many things too tedious to give a Detail of here; particularly in the obvious Difference

of his Behaviour and Treatment of the Witnesses for the Crown, from that observed towards those for the Traverser. The first were brow beat, frown'd at, threatn'd and intimidated by various Arts: Their Persons were vilified, and a general Discredit endeavour'd to be artfully cast upon every thing they said by Innuendoes, Insinuations, significant Grimaces, Shrugs of the Shoulder, satirical Sneers, and other Marks of Disapprobation of different Kinds from the Bench; while on the other hand those produced for the Traverser were receiv'd with a placid serene Countenance, and the highest Marks of Credit and Approbation given to all they said: And the c---f J---ce even condescended to stoop so low as to turn Champion (on an imaginary Affront) for *Bourk*, a Fellow well known to be notoriously infamous.

2dly, The Spirit of the Bench further manifested itself in the great Care and Anxiety express'd to restrain the Evidence for the Crown, and confine it to so narrow a Compass, as not to suffer one of them to utter a Syllable, or to mention any one corroborating Circumstance, but barely the very Points laid in the Indictment: And on the contrary, receiving with Marks of Approbation for the Traverser, the loosest, most vague, uncertain Hear-say, as legal Evidence, and as such, admitting Notes from the Rule-Book, which, (in Regard to the Point they were produc'd to prove) were demonstrat'd to carry no Degree of Certainty with them.

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The Partiality of the Bench appears yet further, in making the printed Trial, formerly had in the Exchequer (a Work not only carelessly taken, but manifestly corrupted in many Places) a Standard of the Veracity of the Witnesses for the Crown and not only pinning them down to a Conformity with that vitiated Copy; but putting many ensnaring Questions to them from it, and if they in the least deviated, tho' but seemingly from that Book, imputing it to them as a Variation from their former Testimony and appealing to the Jury accordingly. The wicked Use made of this Book to intrap the Witnesses is but too plain in the Case of Mrs. Cole (a Witness of the greatest Credit and Veracity) where the vilest Sophistry is employed to mislead and ensnare her. She is asked as from the printed Trial, *if she did not say on the former Trial in the Exchequer, that it was in March or April she went to Dunmain?* She (never doubting, but there might be a Foundation in the printed Trial for asking her that Question, and that it might be said there, that she did go to Dunmain in one of these Months) answered very honestly and candidly; *I do not remember I said so, but if I did, it must be a Mistake arising from the Confusion I was in.* Whereas, in Reality there is no manner of Foundation for this Question in the printed Trial; on the contrary, she there expressly says, she went to Dunmain in the Winter and that my Lady's Miscarriage happen'd about two Months after, *in March or April.* And yet the venerable Judge takes

takes it for granted, and gives it expressly in Charge to the Jury, that she has contradicted her former Testimony, in asserting that she believes it was in *February* she went to *Dunmain*. See her Evidence in the printed Trial; and compare it with her Testimony on the Trial of *Heath*, and the Judge's Charge to the Jury; where many other design'd Misrepresentations appear, particularly in the following Instances.

Mrs. *Cole* in her Examination on the Trial in the Exchequer, as well as on this, said, there were three or four Persons dined at Lord *Altham's* Table, the Day the Saucers were broke; but she did not know or remember who they were: This Forgetfulness of the Witness, of Persons whom she incidentally saw 31 Years ago, and had perhaps never seen before or since, and whose very Names were probably unknown to her, is by the Judge given in Charge to the Jury as a willful designed Concealment on the Part of the Witness: His Words, *She does not mention who they are, but conceals their Names*, will bear no other Construction.

He then proceeds to give in Charge to the Jury, that the Witness swore, Lord *Altham* emptied the Saucers of the Sweatmeats *carefully*, before he broke them: The Word *carefully* was not mentioned by the Witness; but is an Improvement of the Judge; with what Intention is easy to see; since, by the Addition of this Word, it carrieth along with it a shrew'd Insinuation of the improbability of Lord *Altham's*,

being in so great a Passion as the Witness represents him. Lord *Altham* might (if this Word had not been added) have been understood to have emptied as well as to have broke the Saucers in a Passion; but by the Addition of this single Word, the Whole is perverted, and made to convey quite another Meaning. This shews how much a Judge (if not a Man of Integrity) has it in his Power, by the Addition or Alteration of a single Word, or a Phrase, to impose on a weak Jury.

The next Thing observ'd upon as an Inconsistency is the Variation of the Account, given by the Witness of her Age on the former Trial in the Exchequer, from that she now gives. In this I cannot but observe that the Art of Misrepresentation is made Use of in a very eminent Degree; and that Candour, Integrity and Sincerity of the Witness, which touch'd every one that heard this Part of her Evidence, is by the Judge imputed to her as a Fault and a Contradiction to her former Testimony.

This Gentlewoman being on the former Trial call'd upon suddenly to give her Testimony, and asked what Age she might be of when at *Dunmain*, answered, she did not know; she was not sure; but believed she might be now about 45 or 46. Being further interrogated how old she was then? She not having Time to subtract, said she did not know her own Age, nor could say any thing of it with certainty; but believed she might be then 13, 14, or 15 Years old but was not

not sure. She has since then made a strict Enquiry about her Age, in the Register of the Parish where she was born, whereby she finds she was born 1691, and very candidly produc'd a Copy of the Register in Court. The Judge nevertheless, in summing up this Part of her Evidence, (without any Regard to the invincible Ignorance she was under of her own Age, when examined on the first Trial, or her repeated Declarations of her Uncertainty about it) *very honestly*, points out the Extreame of the two Accounts she gave, and from thence concludes, that her present Account of her Age, differs ten Years; from the Account she gave on her former Examination. Whereas in Reality the Difference between these two Accounts, are no more than six or seven Years at most; or rather none at all, because the Witness on the former Trial, constantly acknowledged she did not know her own Age. This Point has been the more enlarg'd upon, as the Traverser's Council; and the Bench seem to lay great Stress on it as a Contradiction: when on the contrary, it is rather a convincing Proof of this Gentlewoman's Sincerity, and Pains to come at Truth.

The next Thing taken Notice of in the Charge as an Inconsistency in Mrs. Cole's Testimony is, that she admits to have said on the former Trial, *that her Mother told her it was an Abortion; but now she says, her Mother and she went into the Closet together: Pray where*
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is the Inconsistency between these two Assertions ?

The Judge then takes Notice, as another Inconsistency, that Mrs. Cole said on her former Trial, *that Lady Altham sat next to her at Table when the Saucers were broke* ; but now she says, *that Lord Altham sat next to her* : There appears no Inconsistency in this, for both of them may have sat next to her.

He afterwards observes as an Inconsistency, that she will not now be positive that Lady *Altham* went to *Vices* to lodge, before she went to *Dunmain* ; but is positive she went to other Lodgings. The Witness never was positive it was *Vice's* House my Lady then went to ; but describes it, and the Situation of it, so as to amount to a Certainty it was *Vice's* House : Nor is it material (if she went to other Lodgings) whose House it was.

The Judge seems to lay great Stress on Mrs. Cole's agreeing with *Settright*, about the latter's being brought to Bed at *Dunmain*, as if it served to give Credit to *Settright's* Testimony : But as this is entirely foreign to any of the Points in Question, I cannot see how this can add Weight to the other Parts of that Woman's Testimony, any more than Mrs. Cole's acknowledging that *Settright* eat, drank, slept, or, &c. while at *Dunmain*, can give her Credit.

He in the next Place, in order to discredit Mrs. Cole, takes Notice she does not remember the House-Maid *Nelly*, nor *Bourk* the Postillion,

Postillion, nor *Anthony Dyer*: There is nothing wonderful in this, at the Distance of thirty-one Years, had they really been in the Family; as it is highly probable they were not, though they swear they were.

Mrs. Cole said on her Examination, she did not remember whether there was Fire or Candle in the Room or not, when *Heath* called her Mother up to Lady *Altham's* Assistance, but believed there might be a Fire, and that she knew Mrs. *Heath* by her Voice; to which the Judge gives the following Turn. *She said she did not know of any Fire or Candle being then in the Room*; which conveys quite another Idea, and imports that there was no Fire or Candle, whereby Mrs. Cole could see or know *Heath*: Ought not a candid Judge rather have acquainted the Jury that Mrs. Cole did not recollect, whether there was Fire or Candle in the Room, but that she knew *Heath* by her Voice.

It would be endless to go through the wilful Misrepresentations of Facts, design'd Omissions, of the strongest Proofs against the Traverser, Additions, strain'd Constructions, and suppos'd Inconsistencies contain'd in this Charge, and in the Observations of the Bench on the Crown Evidence during the Trial. And I cannot help remarking, that if all the supposed Inconsistencies here mentioned between Mrs. Cole's former and present Testimony, had really been as the Judge would represent them, they are such as could not

not in the least affect her Veracity ; but on the contrary, are strong Proofs of her Integrity and Candour ; otherwise there was nothing easier for a Person of her good Sense and Education, than to have conform'd her present Testimony to her former in those Particulars ; as she had read the printed Trial, and had it always ready at Hand to have Recourse to at Pleasure.

It is surprising, that the Judge should venture to assert, that there was nothing certain in what Mrs. *Bush* said : Let any one but read her Testimony, to be convinced of the contrary : She there says, *I knew Lady Altham, I visited her at New-Ross, three or four Times, in February 1714-15 ; she then seemed to me to be big with Child ; pretty big. Being further interrogated said, she appeared to me to be pretty far gone with Child ; my Lady Altham had a Child, I wished my Lord Joy of him on the Quay of Ross, and he thanked me. I saw my Lady the latter End of June following in Dublin, when she was not with Child, and she was then very slender and look'd pale.* Can any one speak with more Certainty, unless they would see the Child within her, or see her delivered ?

The Judge, in his Charge, does not think proper to mention any more of Mrs. *Sutton's* Testimony than, that she swore, *she din'd at Dunmain, and toasted the Boy in the Box.* Is this a fair, or an honest Account of this Woman's

man's Testimony, who is one of the most material Witnesses for the Prosecutor, and of an excellent Character? *She swears that she saw Lady Altham big with Child, about Half a Year after Queen Ann's Death, about Shrovetide: That she observed my Lady big with Child, and was as certain of her being with Child, as any one can be by their Eyes: That Lady Altham, after Dinner, asked her, if she could recommend her a Nurse: That she heard, about the latter End of April, that Lady Altham was brought to-bed of a Son: That there were great Rejoicings, on that Account, about Dunmain, and it was publickly known all over the Country; and saw the Child, a Year and a Half afterwards, at her own House, in my Lady's Lap, in the Chariot, who told her he was her Son. Let any one, after this, say, whether Mrs. Cole, or the J---ge, are most guilty of willful, Concealments?*

The Testimony of *Evan Thomas*, who saw my Lady, three or four Times, at *New-Refs Church*, big with Child; made a Cradle for the Child, &c. that of *Mrs. Tenant*, of *Anstace Toole*, of *Ann Bennet*, of *Elizabeth Doyle*, and of *James Sinnot*, are treated no better than the Last. *Anstace Toole* expressly says, *she saw my Lady about Candlemas after Queen Ann died; that she was then big with Child; that she then fitted a Gown on my Lady in Presence of Mrs. Heath; that she was big with Child, and carried her big-belly well; and*

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seemed to be in her Last-Quarter ; that she afterwards saw my Lady's Son, and made Cloaths for him ; all which is suppressed by the J--ge, and only a few Circumstances no Way relative to the Points in Issue mentioned.

As to the Ridicule endeavoured to be cast, by the Chief J---ge and his Associates, on the Person and Dress of *Edmond Howlett*, (an honest Farmer, who was dressed as other Country People are, and whose Character stands fair and unimpeach'd in the Country where he lives, and in this Court, notwithstanding all the Arts used by L--d A---y and his Faction, to destroy the Characters of Witnesses) it is left to the World to judge, how just, how decent, and how becoming in the venerable Judge, such Reflections from the B---h are. If Men's Dress and Appearance are to be the Measure of their Integrity, the greatest Beaux are to be adjudged the honestest Men, and the best Witnesses of any. This new Doctrine, if established, must prove extremely unlucky for Mr. *Annesley*, as there is not one Gentleman, of any Character, now alive, who lived within six Miles of the Place of his Birth, when he was born.

As to the Difference of the Hour of the Day that Lady *Altham* left *Dunmain* on, between *Howlett's* Account, and that of the other Witnesses ; that so great a Handle is made of, to invalidate his Testimony : It is so far from favouring the Construction endeavoured to be put

put upon it, that it is rather a Mark of the Witnesses's Veracity, and that he was not instructed, as some of those for the Traverfer seem to have been: Besides the Witness is not positive; and it is not surprising, at the Distance of twenty-eight Years, to see Witnesses differ about such minute Circumstances; but very surprising to see the Bench lay so much Stress upon it, and pass over in Silence, all the glaring Inconsistencies of the Witnesses for the Traverfer, without making the least mention of any of them.

There is not one Syllable mentioned in the Charge of either of the J--ges, of *Dennis Redmond's* or *Joan Laffan's* Testimony; tho' they must be own'd to be most material Witnesses, and to have stood the Test of two severe Cross-Examinations, without the Imputation of the least Contradiction or Inconsistency.

Nor is there the least mention of Mr. *Higginson's* Evidence, which for the remarkable good Character of the Man, as well as the exact Conformity of his oral Testimony with his Books (notwithstanding the great Industry and Art used to find Inconsistencies) may be said to out-weigh all the Evidence produced for the Traverfer. And as the C---f J---ce was pleas'd to say, *that it was plain his Memory was bad*, he ought to have satisfied the World of his Reasons for such a Reflection, for all that heard him examined on the Trial in the Exchequer, and now on this Trial, are satisfied he has a sur-

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prising good Memory, to which the exact Agreement between his oral Evidence and his Books, giveth great Credit.

But as the Fallacy and Sophistry made use of in glossing over the Evidence for the Crown; in suppressing and concealing the Strength of it; and exposing and insisting on the supposed Inconsistencies and weakest Parts of it, will best appear by comparing the Evidence itself with the Charge given to the Jury. I shall defer remarking any further upon it until the Trial itself (which, it is said, is now printing) appears: And which (considering the Hands it is now in, of Counsellor *Annesley* and *Spring*, two virulent Enemies of Mr. *Annesley's*, and who are not Persons of the most remarkable Delicacy in Matters of that Kind) I despair of ever seeing appear genuine.

As the Verdict given has made so great a Noise, and has been so much censured, I cannot help saying, in Vindication of many of the Gentlemen of that Jury, that they are Persons of great Worth: But as Persons of the greatest Merit and Probity, may very often, unknown to themselves, imbibe Prepossessions; and may, by frequent disputing and reasoning, so rivet and confirm them, that they never after can divest themselves of them: and when Men, thus disposed, are constituted upon a Jury, and led astray, by the Sophistry and Fallacy of an interested Bench, that concides with them in their Prepossessions, and whereof they have conceiv-
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ed a high Opinion: It is a very hard Matter for such Men, unless they are Persons of extraordinary Penetration, to resist the Torrent of their own Inclinations and Prepossessions, when seconded and improved as in the present Case by an artful Sophister on the B---ch. The powerful and numerous Faction that supports the Tra-
 verser, (who spared neither Art nor Industry to screen her,) having had frequent Opportunities of observing this Disposition in several Gentlemen, took Advantage of it, and by their Interest with the Sheriff, took Care to have such summoned, and others, who were of a different Turn of Mind, designedly omitted; insomuch, that, on the first Day appointed for the Trial, there only appeared eight of the whole Pannel, and on the last Day, only a Number barely sufficient to make a Jury: So that many of those Gentlemen, without Impeachment, either of their Honour or Probity, may have been, and, no doubt, were misled by their own Prepossessions, and the plausible Arts made use of by the B--h, in distorting and discrediting the Evidence for the Crown, to give a Verdict that has undergone so severe a Censure from the Publick. I wish I could say as much to excuse the Zeal of others, who (as has been already said) came seventy Miles from the Country to serve on this Jury.

After what has been said of the vexatious Delays interposed, and Artifices employed, to stave off the Trial of this Offender so often, while

while the Gentlemen, who conducted her Prosecution, were in the Kingdom, and ready to try her; and of the arbitrary, unprecedented Manner in which it has been now hurried on by the C--t of K--'s-B--ch, in the Absence of those Gentlemen, of their most material Witnesses, and of the only Person who was acquainted with the Evidence proper to be applied to convict her, or to confute her Witnesses on a Reply. After what has appeared of the flagitious Methods practised in returning a Panel of Persons almost all absent or incapable of serving; and of the still more flagitious Arts, practised by a partial, interested B--ch, to prepossess the Jury; to intimidate, discountenance, and inveigle witnesses; to suppress the most material Parts of their Evidence, and misrepresent the Rest, and to send it in this vitiated, distorted Light to the Jury: After all these and many other Considerations equally shameful and unjust: It is left to the impartial, and disinterested Part of Mankind to judge whether this Woman has been fairly and honourably acquitted or not? And, if she has not, by whose Means she has escaped. It is very certain, that there was not one of a hundred, that heard her examined, on the Trial in the Exchequer, but were thoroughly convinced she was perjured.

The Points in issue now, are the same that were before the County of *Meath* Jury in the Exchequer. There must an Inundation of Perjury necessarily have been on one Side or t'other

to other: Let the disinterested Part of Mankind therefore, but duly weigh the following Considerations, and then judge on what Side it is most likely to lye.

First, Let them consider the different Genius and Character, and the great Inequality of the Parties engaged in this Contest: The one possess'd of great Power, great Influence, and an ample Fortune, which furnishes him the Means of Corrupting, and, at the same Time, supported by a numerous Band of powerful Relations, Allies, Leasees, Purchasers, Creditors and Dependants of various Kinds, who are interested; many of them Men of Fortune and Power, all linked and united together in the same common Interest; all co-operating and using their utmost Influence (in a Country where they are well-known, and have Power) to stifle and suppress Evidence on the one Hand, and to prepossess and pre-engage them for the opposite Side. The other destitute of every Thing necessary to support him against so powerful a Combination; a Stranger in his own Country; destitute of Money, of Influence, and of Friends, other than what his Misfortunes have rais'd him; Unsupported by any, except one Gentleman of very small Fortune, who is also a Stranger and without Interest.

Secondly, That the Evidence for Mr. Annesley's Birth and Legitimacy are from the County of *Wexford*, a Country, where his Adversary's Power and Influence is very great, and has, since

since he was discovered in *America*, been greatly strengthened by Grants of Lands, Leases, &c. where there are many Men of Fortune, some of them leading Men of the County, deeply interested in the Issue of this Cause ; who, besides the Advantages which their Vicinity and constant Residence there give them, have been very industrious in their Endeavours to stifle Truth. Notwithstanding whereof, and of the various Arts used to deter and cajole People into Silence ; a Cloud of many Hundreds, have, contrary to their own Interest, contrary to their future Quiet and Happiness appeared in favour of Truth.

Is it probable that all the People in the Parish wherein Mr. *Annesley* was born, and the two contiguous Parishes, who were of Age to remember his Birth ; or all the disinterested People in the large populous Town of *New-Ross* would at the Risque of incurring the Displeasure of their Landlords and powerful Neighbours agree to perjure themselves for an impotent poor Impostor, if they knew him to be such.

Or is it to be presumed that the common Voice and Reputation of the Country round, the different Places where Mr. *Annesley* afterwards lived with his Father, would unite to countenance so flagrant an Imposition, were he an Impostor ? Or that nine hundred, or a thousand People, from all Parts of the Kingdom, (to which Number the Witnesses who have declared their Knowledge of Mr. *Annesley* do already amount

amount, would unite together to carry on a System of Perjury without any visible Interest to themselves? Or is there any one rich enough to keep so great a Number staunch to a System of Corruption.

These Things being premised, it is left to the Consideration of every rational Man to conclude on what Side the Perjury is most probable to be; whether on the Side of a poor, unfortunate, helpless, friendless, Moneyless Stranger, or that of a rich powerful, numerous, Combination, of five or six hundred, all deeply interested, most of them residing in the Country where the Facts happened, many of them having powerful Relations, Allies and Friends, in-somuch that it appears the very B---h is not free from this Contagion.

I am Sir, &c.

Dublin, March

5. 1744-5.

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Dear

Dear S I R,

FOR want of News, I send you an authentic Account of the extraordinary Behaviour of the *K---s B---ch*, in the Trial of *Mary Heath*, which has made a great Noise here, and raised the Indignation of every disinterested Person against the glaring Partiality of that proceeding.

On *Monday* the fourth of *February*, Eight only of the Jury appeared; and altho' Mr. *Nelson*, Solicitor for the Prosecution, complain'd to the Court, that he often demanded a List of the Jury, from the Sheriff on *Friday* and *Saturday*, and told him he was sure the Traverser had a List; yet he could not have it on Behalf of the Crown, though entitled to it. Of which the Court took no Notice, otherwise than in making an Excuse for the Sheriff, as if he could not do it without Leave of the Court, and you know the Leave of the Court is never asked in such Cases; nor did the Sheriff, nor his Sub-Sheriff make any Reply. And upon Mr. *Nelson's* Affidavit of the Absence of Mr. *Mackkercher*, and several of the most material Witnesses, whom he believed then at the Water-side, and expected over with the Packets, (of which there were Seven due) Mr. *Spring*, a Council for the Traverser, insisted on going into the Matter immediately, and would fain shew to the Court, that this Trial ought not to be put off,

off, even though Mr. *Mackercher*, &c. did not arrive; and thought it proper a Time to consider that Point, and insisted on having Mr. *Nelson's* Consent to bring on the Trial on *Thursday* following at all Events.

This, how unreasonable soever it appeared, was received; and the L--d Ch--f J--ce said, there was no Occasion for such a Consent; for, if the Prosecution was not carried on, he would proceed to try the Traverser, and then prefix'd the eight Jurymen who then appeared, to *Thursday*.

This Pannel was ushered in with the Names of the first Men of the Country; but it was publicly known and observed, many of the most considerable of them were then, and still are in *England*. Some, and particularly Mr. *Tentworth*, were confined to their Beds, and so old and infirm, as not to have been able to attend on Juries for several Years. Some of them were dead some Time, and particularly, Mr. *Steward* of *Mount-Steward*; and many of them of considerable Fortune, lived out of the Country for many Years, and were not, nor could they be summoned. A few of the rest were Intimates of the L--d C--f J--ce; others were Creatures of *Terrence*, *Mac Laughlin*, the Bailiff, whom you know to be particularly interested in this Cause; and others of the same Stamp; others were Officers of the *Customs*; Clerks in the Court of *Chancery*; and Persons in other Employments, who never can, nor ever do attend any Jury;
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the Inference whereof is very obvious. And upon the examining the Bailiffs, it appear'd that such, and such only were summoned, as were generally supposed to be warm Advocates for the Lord A---y, C---les, and W---am A---sley.

On *Thursday* a full Jury appeared, and then the Sollicitor General moved to have the Trial put off till next Term on Mr. *Nelson's* Affidavit, and the Affidavit of *Robert Kennedy*. They were read, and by the latter it fully appeared Col. *Weldon* was so extremely ill of the Gout, as not to be able to leave his Chair, and that he was a most material Evidence for the Crown, This Matter was debated for some Time, and the Sollicitor said, he would confine himself to the Reasons offered last Term, by the Council for the Traverfer, for putting off the Trial at her Request, and hoped they would have the same Weight now with the Court, they formerly had; especially as this was the first Application in Behalf of the Crown; and the Traverfer had notoriously delayed the Trial, and had several Times put it off on the like Affidavits, after the Gentlemen who carried on the Prosecution for the Crown, had as often at a great Expence prepared for Trial. This Affidavit of *Kennedy's* was very strong; the L--d C--f J--ce read it, and read it, and at last observed, *Robert Kennedy* was without a proper Addition of Trade, or Calling: To obviate this, he was produc'd on the Table, (the first Instance of the Kind on such an Occasion) he was examin-

ed by the C--f J--ce to his Business, the Oc-
 casion of his seeing Col. *Weldon*, and with
 some Severity ask'd, how he could take on him
 to say Mr. *Weldon* was a material Witness;
 which he answered to every Body's Satisfaction,
 and said he knew the Collonel, sat with him
 lately for above an Hour, and saw him swear
 an Affidavit last *August*, which he carried over
 to *England*, in order to lay before the Attor-
 ney General, on the Petition of Mr. *James*
Amesley, to his Majesty; which he read, and
 from thence could say, Collonel *Weldon* was
 a most material Witness. But the C----f
 J--ce sent him off, and thought it very
 extraordinary a *Subpœna* Server (for with that
 Epithet he branded him; though well known
 to be an honest House-keeper, because he serv-
 ed the Colonel on that Occasion) should take
 on him to Judge the materiality of Evidence;
 he then with great warmth got up, opened the
 printed Trial, and said he was certain a great
 deal of immaterial Evidence was introduc'd in
 that Trial; to avoid which, he would now take
 particular Care. And upon Mr. Solicitors again
 enforcing his Reasons for putting off the Trial,
 and urging the Weight of the former Verdict,
 by the first Men in the Kingdom on the most
 solemn Trial; and Deliberation for 15 Days;
 insisted that should induce the Court to give an
 Opportunity of a Fair, full Trial for the sake of
 public Justice.

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The C--f J--ce answered all his Reasons, with this remarkable Observation, *that he was not to be any way influenc'd by the former Verdict; the Tricks of the Jagger would not perhaps pass a second Time.* However they might have succeeded once; and with great fervency the Motion of the Solicitor General was denied, contrary to all Practice, and every body's Expectation.

The C--f J--ce proceeded further; and said if they did not intend prosecuting the Traverser, 'twere best not to give the Gentlemen of the Jury the Trouble of attending again. The Agent for the Crown said, notwithstanding the Hardship and manifest Disadvantage of being compell'd to go to Trial in the Absence of the Prosecutors and of the principal Evidence for the Crown, he believed they would not permit the Traverser to escape unpunished; and then the C--f J--ce directed the said Agent to give Notice of Trial that Night if he would proceed on the Prosecution the next Day, to which Time the Jury was again prefix'd, and Mr. *Nelson* accordingly gave Notice that Night.

On *Friday* the Jury appeared, and the C--f J--ce was so well pleased with them, that twice or thrice as he went to the Chamber of the *King's-Bench*, he thanked the Sheriff for so good a Jury; and several Times insisted that the Council for the Crown should not Introduce any Evidence but what was immediately and directly to the Points in Issue, and declared against all Hearsay Evidence, which he carried so far as to

to exclude the Hear-say of the Lady *Altham*, in Mrs. *Bushes* Testimony, tho' it appear'd highly legal and reasonable, that as she saw Lady *Altham* big, and afterwards reduced to her natural Size, she should be admitted to declare what pass'd between her and my Lady on the Occasion. The same Severity appear'd on Dr. *Jemmat's* Testimony, and on every other Evidence against her. Before the Case was open'd, it was order'd that no one who was to be examin'd as a Witness should walk in the Hall, or come near the Court, otherwise they should not be admitted to be examined? And yet notwithstanding this Order the Traversers Witnesses could not be brought to comply with it, and tho' frequent Complaints were made, several of her Evidence walked about the Court, particular one Parson *Harvey* attended in the *King's-Bench* Court, even while the Recorder opened the Traverser's Defence: Of which complaint was made, but he was notwithstanding contrary to that very Order admitted to be examin'd, so that that Order seems to have been made for one side only. Another Instance of manifest partiality was, that the Prosecutors Council was oblig'd to open the Evidence for the Crown particularly, as they were produc'd; and it was overlook'd in three several Instances on the Traverser's Side, tho' insisted on by the Council for the Crown. Such of them as were produc'd on the Trial at Bar, were examin'd by the C--f J--ce out of the printed Trial; and altho' that

that could not be legal Evidence, nor offered to the Court or Jury, yet the C--f J--ce if he thought the least Variation appear'd, constantly observ'd upon it, and frequently asked the Witnesses (in order to shew the supposed Inconsistency) if they did not swear so and so on the former Trial, in the Enchequer but never did so in one Instance, to the Witnesses produced on TraversersSide. Thus the Court pinned down the Witnesses examined on Behalf of the Crown, to a printed Trial, in itself manifestly corrupted; willfully viciated and altered in the numberless Circumstances to Mr. *Annesley's* prejudice; from the Evidence as delivered in Court: Which everyone who were present at the Trial, but more particularly the Gentlemen of the County of *Meath* who served on that Jury can attest, and loudly complain off. The C--f J--ce on the close of every Evidence, address'd the Jury, and with some severe Reflections branded almost every Evidence for the Crown, with (" the Gentlemen of the Jury no doubt will observe the probability of " this Piece of Evidence," and that always with a Sneering Laugh) or Expressions like this on every Occasion. Whenever an Evidence was produc'd, whom a severe Aspect might probably intimidate, then he took care to look, and to speak, so as to terrify; in a manner that struck every unprejudiced Hearer, and which may be conceived better than express'd. And after using several in that manner, when *Edmond Howlet*, appeared before he was examined he bad him

take are of what he then swore ; and told him, *though probably he might not think on the Punishment which attended Perjury hereafter, he assured him he would take care, it should be punished here immediately.* And thro' the whole course such Expressions passed from him, in order to let the Jury see he thought all the Witnesses for the Crown, were a set of perjur'd Witnesses ; and had so far wrought on the Jury that one of them at last said ; " why are we troubledt hen with such, for his Part if a 100 such were produc'd, he would have no regard to their Testimony," on which the C--f J--ce said, *No, indeed.*

But thro' the Course of the Traverser's Evidence, the Scene was varied in every Instance, Hear-says were good Evidence : No printed Trial was opened on the Bench : No harsh Expressions used : No Stern Countenance assumed : No Insinuation to the Jury, but what was most favourable for supporting the Credit of every Witness : The Gentlewomen were desired to sit down ; and when some body for the Crown said in a low Voice, here comes the Postillion, the C--f J--ce angrily arose, and said, *Sure a Postillion is as good as those produced against the Traverser.* And what was most observable was that when Mr. *Bush* was produc'd to invalidate this Postillion's Evidence, Mr. *Recorder* was proceeding to cross examine him ; and putting him a Question, the C--f J--ce (who sagaciously saw the Answer would not serve the Traverser,)

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hastily

hastily asked the *Recorder* what he was about. And told him he was strenghtening the Adverry's Evidence. He admitted the Copies of Notes from the Court of *Chancery*, to shew Mr. *Cliff* was in *Dublin* and tho' it clearly appeared that he might have been, (as he really was) in *Ross*, from the 14th of *May*, 1715 to the 31st, yet in summing up the Evidence he never mentioned a Syllable of it, but depended chiefly on this very illegal and lame Evidence, which he said, could not lie. Not opening the Evidence before Hand, as required, and as the *Traverser's* Council ought. Mr. *Cliff* and Mr. *Tench* were produc'd and sworn, when it was most apparent they could not be legal Evidence; being only Hear-say Men, but it was calculated meerly to prejudice. And on the close, the C--f J--ce sufficiently shew'd that there was no need to produce more Evidence for the *Traverser*; he seemed convinc'd, and on insinuating this to the Jury, and *Heath's* Lawyers; they rested.

And on the Reply, if a Witness was an instant delay'd, he shewed his Resentment and thought the Court ill used, and the Reply at Length cut short by the Judges getting up to give the Charge, tho' Mr. *Nesbit* was call'd and came into Court he was not examin'd, and what was wanting in the C--f J--ce was amply made up by J-- H-- who summ'd up the Evidence with his shrew'd Observations; which being compar'd with the Evidence itself, will shew how little Regard was had in this Charge to Truth. The Judge

Judge stopped at Mr. *Higginson's* Testimony, to which he said nothing; and did not sum up a Tittle of the Traverser's Evidence. The C--f J--ce who again took an Opportunity of sinking the Testimony for the Crown as low as possible, endeavoured in this Manner to shew a pretended Want of Certainty in the most material Witnesses, and that Things of this Sort in a Case of Perjury should be prov'd beyond doubt; which he own'd he did not think done here: And took an Occasion on Mrs. *Wheedon's* Testimony, of touching the pretended Attempts on her, and wished indeed that Mr. *Mackercher* had never made the extraordinary Affidavit he did in that Affair, this was extra-judicially introduc'd, merely to injury that Gentleman, in the Opinion of the Jury. When the Jury staid out about a Quarter of an Hour, the C--f J--ce seem'd prodigiously uneasy; at last moved to the Chamber, and on his Return seem'd very anxious about the Delay given; but was fully satisfied, and went off at 6 o'Clock chearful on the Verdict. I have given you but a very imperfect Account, of Facts which fell within my own Observation. There were many other things wherein the partiality of the Court manifested itself too tedious to be inserted here; it has however occasion'd a very great and just Clamour and has brought that B--ch into very great Contempt, which may possibly bring on a public Enquiry into this Affair. It is the general and confirm'd Opinion that tho' *Heatb* was acquitted of the Punishment, she

she is still guilty of the Crime with which she was charged, infomuch, that the following saying is become proverbial here, " That *Heath* is acquitted and L--d C--f J--ce M---y found " guilty."

Though the Arguments made use of in the Close of the First Letter (whereby to determine on which Side the Perjury is presumed to be) are, in my Opinion, very strong and conclusive ; yet they might receive no small Light from a Review of the whole Tenor of the Behaviour and Conduct of Mr. *Annesley's* Enemies, from the Time he first was heard of in the *West-Indies* till now ; as there appears, through the Whole thereof, a manifest Consciousness of his Right : But, as the narrow Bounds prescribed to these Sheets, will not admit of so long a detail of Facts, I shall beg leave to ask the Head of the Combination a few Questions only, to which (if he is innocent) the Public will expect satisfactory Answers.

First, If this unfortunate young Man is a Bastard, or an Impostor (such as that noble Peer and his Accomplices would represent him to be) why that Pannic express'd on his first Arrival in *Europe*, as to retain all the great Lawyers in *England* and *Ireland*, against him before any Suit had been commenced ?

Why those early Efforts of the noble Peer and his Agents to take off Mr. *Mackercher*, and to dissuade him from supporting him, or undertaking his Cause ?

If this helpless, and, at that Time, friendless, Man, was the Son of *Juggy Landy*, why were such early Measures taken to destroy him as soon as he landed in *Europe*? Why was the *Anglesey-Yacht* then sent from *Ireland* to *London*, with a Set of *Russians* for that Purpose? Why was *Stanley* and his Associates armed in so extraordinary a Manner, with each a Case of Pistols and a Poyniard, by your Lordship's express written Order, and detached in quest of this pretended Bastard to assassinate him? And why was the same *Stanley*, when afterwards taken and imprisoned at *Dublin* for the like Attempt; there, bailed out by your Lordship's principal Agent; and *Francis Annesley*, of *Balysax*; your Friend and Cousin: And immediately after admitted into your Lordship's Family and Cabinet Councils?

Why was the same *Stanley* (a Fellow notoriously infamous and wicked, who has Warrants now standing out against him for Street-Robberies at *London*) been ever since continued in Familiarity with your Lordship? And unless your Lordship has yet some good Purposes to serve by him, why was this profess'd Assassin (when very lately taken up, and half tried for confederating with others, and lying in wait to take away Mr. *Annesley* and Mr. *Mackercher's* lives) defended by your Lordship? And why were your Attornies and a numerous Bar of your Council, fee'd by you on that Occasion to appear for him? Why was *Clark* (a notorious
Russian

Russian who had fled his Country for his Wickedness) brought back to *Ireland* by you, cloathed like a Gentleman, his Pockets filled with Gold (till he was at length obliged to fly: Warrants being issued out against him on the Informations of several Persons whom he endeavoured to seduce by Money to murder this pretended Bastard) why, I say, was this wicked Implement brought to *Ireland* by you, and kept in your Family in this pampered Manner, as it cannot be pretended he was your Domestic? Why was so much Pains and so great Interest used, about that Time, by you to obtain the Enlargement of the famous *Paddy Murphy*, who had been long in Goal for his wicked Attempts of murdering a Gentleman? And as he was informed against, as one of *Stanley* and *Clark's* Associates in the late intended Assassination; why is he still kept in your Family?

If this same Pretender, as you are pleased to call him is only a Bastard; why that immoderate Joy when you heard of the melancholy Accident that happened him at *Staines*? Why did you, on that Occasion, go to the Prison to insult him in his Misfortunes, and endeavour to prevail on the Goaler (who had more Humanity than you) to use him with Cruelty and load him with Irons? Why should you, who had nothing to do with that Affair, employ an Army of Lawyers, Agents, and Emissaries; and throw away eight or nine hundred Pounds, to carry on a virulent Prosecution against him at
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the *Old Bailey* in order to destroy him under Colour of Law ? What cou'd be the Motives of your keeness in that Prosecution, and of the foul Practices made use of, by you, to Corrupt and make Evidence against him ? Why was that Apparatus at the Curragh of *Kildare* to destroy, not only him, but all that were with him ; for which your Accomplices and you now stand indicted ? And why was *Angush Byrn* the Day following with your own Gun in his Hand ordered to shoot this pretended Bastard ? If he in reality be a Bastard, how come you now to vary so much from the first Accounts you gave of him ? You gave several different Accounts of him when he came first into *England* (tho' you had no less than a Year and a half to have formed your System in) which is, at least, a strong Presumption that none of your Accounts were true. If it was so clear as you wou'd then have persuaded the World, that he was an Impostor ; why did you betray your Fears of him so much as to screen yourself as long as you could behind your Privilege ? And when that could no longer protect you, why make use of all the low tricking Shifts and Arts that the fertile Invention of your Attornies cou'd suggest to prevent and delay coming to a fair and honest Trial of that Fact ? Had you not all the fair Play possible given you ? Did you not even know all that each of Mr. *Annesley's* Witnesses cou'd say, above a Month before the Trial at Bar ? Did not the same Persons who were your Commissioners and examined his Witnesses on the Commission,

afterwards; draw up your Briefs, and appear publicly in the Court of Exchequer, as your Attornies and Sollicitors on that Trial? Cou'd you possibly have met with a fairer Adversary? Have you not now the same Advantages in Relation to the Grand Affair of the Peerage, and yet you decline coming at a fair Trial? Does not all this betray your own Conscioufness of having a bad Cause?

If this Man be only what you would represent him to be, why are so many unfair Means now practis'd by you, and your all powerful Combination in the County of *Wexford* to stifle and suppress Evidence from apoearing; and to terrifie, mal-treat, inveigle, and use with Cruelty, those who have already appeared?

Why are so many Calumnies invented, and so many various Methods practis'd at this Time, by you and your Party, to Distress his Friends, and oppress him; even to the fishing out for, and buying up of their Debts?

Why was this Chimerical, idle Pretension of M^r. *Phipp*'s, trump't up at this Time? And why are you, your Agents, and Emiffaries, above all others, the most active and busy in publishing it. Believe me, Sir, Truth, and an honest Cause have no Need of these low Arts to support them. If you wou'd have the World believe you in the Right; show it, by setting aside all those Collusions and consenting to come as speedily as possible to a fair Trial of the Fact; before a Tribunal, where you are sure of meeting with Justice.